



## BRECKLAND COUNCIL

### AN ACCEPTABLE USE POLICY AND GUIDANCE

#### Councillor Websites

Your Councillor website is intended as a means to enable you to communicate with your constituents (and other interested parties) and to promote your work and role. Breckland Council (herein referred to as the Council) will retain responsibility for maintaining the Breckland site as a whole; you will have responsibility for editing your individual site. The Council will not be responsible for approving the content of your site. In order to protect itself and individual Members, the Council requires that each participating Member signs up and adheres to the Members' User Agreement (Appendix B attached).

These guidelines outline the proper use of this facility and the Member's responsibilities in using it. They should be read in conjunction with the Information Security Policy and Guidelines and the Council's Code of Conduct for Members - all of which also include relevant guidance and requirements.

The Council makes the website facilities available for the use of Members in connection with Council business. Like all the Council's ICT equipment and systems, they must not be used for any purpose other than those directly concerned with official Council business, or the work of Elected Members.

'Official Council business' means matters relating to a Member's duties as an elected Councillor; as a member of the Executive, a Committee or Scrutiny Panel, sub-committee or working party; or as a Council representative on another body or organisation.

The facility to author website pages should be used by Members to provide their constituents, and the public in general, with factual information about them and their role, and to encourage citizens to contact them when appropriate. Suitable content would include:

- Information about how citizens may contact the Councillor, and when and why they should do so;
- Information about the Councillor's roles within the Council and as a Council representative on other bodies;
- Information about the Councillor's proposals, decisions and recommendations related to their Council position and responsibilities, and the reasons for them;
- Information about the ward this Councillor represents, including current issues.

However, this content must not be party political, nor liable to misrepresentation. Statements must not be made in party political terms, using political slogans, expressly advocating the policies of a particular political party, or directly attacking the policies and opinions of other parties, groups or individuals.

The Acceptable Use Policy (herein referred to as AUP) seeks to give further information about the requirements of the User Agreement. It also defines the purposes for which you cannot use the site. In summary Members should **not**: -

- \* Be defamatory
- \* Breach any duty of confidence or data protection laws
- \* Post content that discriminates against people on the grounds of disability, age, gender or race.
- \* Use the site for political or party political purposes
- \* Post content that is offensive, obscene or indecent
- \* Breach copyright or intellectual property rights
- \* Use the site for personal commercial gain
- \* Post content that is inflammatory or excites hatred against particular race, religion, ideas or ideals

Using the Councillor website in any of the ways mentioned above could lead to Members being personally liable in the civil or even criminal courts. The purpose of this AUP and the User Agreement (together with any Guidance) is to protect the interests of individual Members and the Council as a whole. Failure to adhere to the Members' Agreement could lead to the individual's site being suspended without prior notice to the Member.

In addition, the Councillor website's must **not** be used to:

- Conducting personal campaigns;
- Personalise issues (other than fairly reflecting individual responsibilities of Councillors holding specific Council positions);
- Make public, information which the Councillor has received as confidential;
- Promote private interests unconnected with Council business.

During election periods, the Council will remove all or part of the content of Councillors' pages, as judged necessary to ensure compliance with the Representation of the People Act.

### **Defamation**

A defamatory statement exposes a person to hatred, ridicule or contempt, which causes him/her to be shunned or avoided, or which has a tendency to lower him/her in the estimation of right thinking members of society generally or injure in his/her office, profession or trade.

Members may not use their sites to publish defamatory statements or material. Anyone who believes a Councillor has defamed them will be able to take legal action directly against the Councillor concerned.

For the avoidance of any doubt, the Council does not authorise or in any way sanction the publication of statements that might be construed as defamatory.

### **Data Protection**

Members are Data Controllers under the Data Protection Act 1998. The three main areas of responsibility for Members are: -

- \* To ensure that personal data is processed in accordance with the Data Protection Act 1998.
- \* To check that their annual Data Protection Notifications to the Information Commissioner are up-to-date and include activity on the Councillor website.
- \* To ensure that subject access requests are dealt with in accordance with the requirements of the Data Protection Act 1998.

"Personal data" is defined as information which relates to a living individual who can be identified from those data or from those data and any other information which is in the possession of or likely to come into the possession of the data controller. Personal data includes any expression of opinion about the individual, and any images of an individual.

It is a requirement of the User Agreement that Members do not post any personal data unless they have the express written consent of the individual concerned; or the details are sufficiently anonymous to prevent identification; or the data is already and legitimately in the public domain.

Further information is available from Data Protection Advisor, 01362 656383. The Information Commissioner's site at <http://www.informationcommissioner.gov.uk/> is a useful source of information.

### **Duty of confidentiality**

Members may owe a common law duty of confidentiality to another party and should take care not to breach such a duty even where the disclosure would not amount to a breach under data protection or libel laws. The duty extends to deceased persons.

The Council has a duty to respond to requests made under the provisions of the Freedom of Information Act. Councillors shall provide information to the Council in respect of such requests

### **Discrimination**

Members may not post any statements or images or provide links to external sites that may incite racial hatred or are otherwise racist, sexist, or otherwise unlawfully discriminatory. Racial or sex discrimination or harassment could lead to civil or criminal proceedings under the Race Relations Act, 1975; Sex Discrimination Act 1976; or the Public Order Act 1986.

### **Political Publicity**

Because the Council funds the Councillor website pages, Members may **not** use their site to:

- promote political campaigns and advocate political stances on issues;
- to promote a political party or persons identified with a political party; or
- to promote or oppose a view on a question of political controversy, which is identifiable of the view of one political party and not of another.

Section 4 of the Local Government Act 1986 enabled the Secretary of State to issue a Code of Practice on local authority publicity. The original Code was amended in 2001. The Code was made more flexible in relation to publicity about individual councillors and the relevant paragraphs are:-

*"Publicity about individual councillors may include the contact details, the positions they hold in the Council (for example a member of the Executive or Chair of Overview and Scrutiny Committee) and their responsibilities. Publicity may also include information about individual councillors' proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the council. All such publicity should be objective and explanatory and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the council, personalisation of issues or personal image making should be avoided.*

*"Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to his/her position and responsibilities within the council, and to put forward his/her justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party, or directly attacking policies and opinions of other parties, groups or individuals".*

### **Representation of the People Act Restrictions**

During election times (from the "notice of an election" to the election itself), Councillors' websites will be suspended. Visitors will still, however, be able to contact them through the main Councillor website.

### **Personal Commercial Gain**

Members must not use the Councillor website for any personal commercial activities and should not seek to secure any personal preference, benefit or advantage via its usage.

### **Copyright/Intellectual Property Rights**

Care must be taken not to use material from other websites or publications without the consent of the other party. Material that might infringe copyright will include not only written material but also the use of images, photographic or otherwise, sound recordings and computer software. Members could be personally liable where such a breach occurs.

### **Obscenity**

It is a criminal offence to publish obscene material under the Obscene Publications Act 1959 as amended. Under the Telecommunications Act 1984 it is a criminal offence for any person to send a message that is grossly offensive, indecent or obscene by means of a telecommunications system, which includes the internet and email.

### **Elected Members Code of Conduct**

The Councillor website should not be used to breach any local protocols. (Please refer to the Council's Constitution for full details, a copy of which has been supplied to all Members and which can also be found on the [Council's Website](#)).

On a general level: -

- The site must not be used in a way that will bring Members or the Council into disrepute.
- The site must promote equality by not discriminating unlawfully against any person, by treating others with respect and not to do anything which compromises the impartiality of those who work for or on behalf of the Council.
- Members must treat Officers' recommendations or known views impartially.
- Members must not disclose information given to them in confidence or information acquired, which they believe, is of a confidential nature without the consent of a person authorised to give it.
- Members must not use their Councillor website to disclose information which the Council has considered in exempt session, or which they are on notice is confidential for any other reason.

- Members must not use their Councillor website to secure personal advantage or secure use for themselves or others of the resources of the Council (for example, by advertising a commercial service or by using the site to encourage the Council to purchase a particular item or service).

### **Tainting of Decision Making Through Biased/Closed Minds**

Members who are in positions of determining quasi-judicial processes, particularly planning and licensing applications, or determining the outcome of consultation exercises must exercise care to keep an open mind on issues which he or she may be required to make decisions. The use of individual websites to set out a clear position on a particular issue could well provide evidence of bias based on a particular personal interest or view, or a closed mind. This would demonstrate the artificiality of the Member when purporting to consider openly all issues in the determination of that matter.

### **To Have Regard to all Relevant Advice When Reaching Decisions and to Give Reasons for Decisions.**

Members must give an accurate and even handed account of discussions or processes that lead to decisions being taken and should not in any event use the website to discuss personal cases.

### **Insurance and Indemnity**

Members are required to indemnify the Council as part of the User Agreement. In limited circumstances Members may be protected against claims arising as a result of the use of this site under the Council's insurance policy. However, they should not assume this to be the case and if in doubt should contact the council's insurance officer.

### **Complaints Procedure**

Members of the public will be able to make complaints to the council where they feel that this Policy has been breached. The procedure for making a complaint is outlined in Appendix A below. Details of a complainant, although not the nature of the complaint, will remain confidential to the Standards Officer and the individuals involved in any specific complaint.

### **Disclaimer**

The contents of this document are intended to be a brief guide to the relevant laws and are not intended as an authoritative or definitive guide. Members with any concerns about legal issues should in the first place contact the Head of Legal Services.

## **APPENDIX A**

### **Breckland Council** **Councillor Web Pages Complaints Policy**

Any Councillor or member of the public can make complaints about the content of a Councillor website. The complainant will be asked to complete their contact details, without which a complaint cannot be made. All complaints need to be put in writing and sent to the Standards Officer posted to Breckland Council, Elizabeth House, Walpole Loke, Dereham, NR19 1EE.

The Standards Officer will deal with complaints as soon as notification is received.

Complaints that are believed to be 'valid' will be dealt with as follows:-

1. The relevant Member will be notified of the complaint, however, the name and contact details of the complainant will not be given to the Councillor. For Data Protection purposes the Standards Officer will be the only person holding the complainant's contact details. The Standards Officer will send an acknowledgement of the complaint, to the Member and complainant, and advise them of the deadlines for response by the Monitoring Officer.
2. The Monitoring Officer will investigate the complaint and write to the complainant and relevant member within 5 working days. If the Monitoring Officer believes that the content being complained about warrants it, the relevant councillor's web pages will be taken down immediately. However, the public can continue to contact their Councillor through the Council's website.
3. The Monitoring Officer will then contact the Councillor against whom the complaint has been lodged to advise him/her to remove, or make suitable changes to the material, which is the subject of the complaint within 24 hours. If the Member is on holiday the site will be taken down until the necessary changes have been made. However, the public can continue to contact their Councillor through the Council's website.
4. The Member's site will be restored as soon as the Monitoring Officer has verified the necessary changes have been made. The site will remain disabled until the changes have been made.
5. If the Member makes the appropriate changes after the required time scale the Member Site will be restored as soon as the Monitoring Officer has verified the necessary changes have been made.
6. If either the complainant or the member concerned are not satisfied with the decision of the Monitoring Officer, they have a right to have the issue reviewed by the Chief Executive which they must notify the council of within 5 working days of the date of the decision. The Chief Executive will investigate and complete this within 10 working days from the date notified by the complainant or member.

The decision of the Chief Executive will be final.

If the complaint is 'not valid' no action will be taken and the Monitoring Officer will notify the complainant. The relevant Member will also be informed that an invalid complaint has been received; however, the complainant's name or contact details will not be given.

**APPENDIX B**

**BRECKLAND COUNCIL MEMBERS' USER AGREEMENT**

Breckland Council requires each Member who wishes to use the Councillor website to enter into this User Agreement. This sets out the terms under which Members may use the site and is designed to protect both Members and the Council as far as possible from legal liability. Further details are available in the Acceptable Use Policy (AUP), which Members are advised to read before signing this Agreement. Breckland Council will not be able to provide Councillor facilities to any Member who has not signed this Agreement and reserves the right to withdraw the facility from any Member who in the Council's opinion is in breach of it.

1. In signing this Agreement I, Councillor ....., agree to abide by its terms and by the terms of the Acceptable Use Policy and any associated Guidance, and any future amendments thereto (which shall be communicated to me by the Council). Guidance means the guidance "Acceptable Use Policy" to which this appendix B Breckland Council Members User Agreement" is attached
2. In managing my Councillor website I undertake not to:-
  - 2.1 (a) post any personal information or data (including images or expressions of opinion) about any other individual unless I have the express written consent of that individual, or
  - (b) the details are sufficiently anonymous to prevent identification, or
  - (c) the data are already legitimately in the public domain and publication by me will not otherwise breach the terms of this Agreement
- 2.2 Make defamatory statements about any organisation, living individual or a specific group of people, or make any inflammatory statements, or excite hatred against particular race, religion, ideas or ideals"
- 2.3 Post any statements or images or provide links to external sites that may incite racial hatred or are otherwise racist, or sexist, or unlawfully discriminatory.
- 2.4 Use the site to promote political or party political campaigns or issues or to directly attack the policies and opinions of other parties, groups or individuals or otherwise breach the Local Government Act 1986 Code of Practice on Publicity.
- 2.5 Use personal data that I collect from visitors to my site for any purpose other than those stated at the time the data was collected.
- 2.6 Post any statements or images that are offensive, obscene, or otherwise breach the Obscene Publications Act 1959, as amended or the Telecommunications Act 1984 and subsequently amended legislation.
- 2.7 Post any statements or images in breach of the Council's or another party's copyright or intellectual property rights.
- 2.8 Not use the site for any personal commercial gain.
3. In managing the site I agree:-
  - 3.1 that for the purposes of the Data Protection Act 1998 I am the Data Controller and will comply with the requirements of that Act. These include, but are not necessarily limited to:
    - (a) The requirements regarding the processing of personal data;
    - (b) The requirement to ensure that my Notification to the Information Commissioner is up-to-date
  - 3.2 To adhere to the Ten General Principles of Public Life and the Model Code of Conduct, which includes but is not limited to provisions concerning a Member's behaviour; the disclosure of information; and the making of executive decisions.
  - 3.3 To uphold the Council's Constitution.
  - 3.4 To indemnify and keep fully indemnified the Council against all actions, claims, damages, demands, proceedings, costs, charges and expenses arising from my provision of or the use of or publication in the Councillor website, whether directly or indirectly by me or by my agent or any other person with or without my consent or knowledge for whatsoever reason.
  - 3.5 That the Council reserves the right to suspend or withdraw in whole or in part the site or my use of it in accordance with the complaints procedure as detailed in the Guidance.
  - 3.6 That the Council reserves the right to suspend or withdraw in whole or in part the site or my use of it without notice in the event that the Council determines that it is appropriate to do so.
  - 3.7 I shall not or allow to be published on the Councillor Web Site any material or allow such material to be published on the Councillors Web Site or reveal or allow to be revealed to anyone any confidential information that relates to the Council's functions or business affairs. I shall provide any information to the Council, being an officer of the Council dealing with freedom of information matters at the Council's entire discretion which the Council may require following a request for information under the Freedom of Information Act 2000

Signed:.....

Councillor:..... (please print name)

Dated: .....